

REMARKS**RECEIVED
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SEP 06 2006*****Priority***

The priority documents were submitted in parent application Serial No. 09/097,832, now United States Patent No. 6,349,722, on July 23, 1998. Acknowledgment of the completion of the
5 priority claim is requested.

Information Disclosure Statement

Applicants noted that form PTO-1449 was not submitted with the Information Disclosure Statement filed on September 13, 2003, therefore, Applicants submitted a new Information
10 Disclosure Statement dated November 4, 2006 which has already been considered by the Examiner. Therefore, all references that should have been cited in the Information Disclosure Statement filed on September 13, 2003 have been considered.

Specification

15 The Abstract has been amended in accordance the Examiner's requirements. The required changes to the specification have been made. Entry is requested and withdrawal of the rejection is requested.

Claim Objections

20 Claim 12 has been amended by replacing the word "effect" with "affect" as suggested by the Examiner. Entry is requested and withdrawal of the rejection is requested.

Claim Rejections - 35 U.S.C. §112

Claim 16 has been amended by replacing the limitation “the end” with “an end”, thereby overcoming the lack of antecedent basis objection raised by the Examiner. Withdrawal of the rejection is requested.

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Double Patenting

The Examiner has rejected a number of the claims on the grounds of non-statutory obviousness-type double patenting view of United States Patent No. 6,802,314, United States Patent No. 6,272,933, United States Patent No. 6,694,974, and United States Patent No. 6,349,722. Enclosed herewith are Terminal Disclaimers for each of the afore-mentioned patents. Applicants submit that this overcomes the Examiner’s double patenting objection. Withdrawal of same is requested.

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Claim Rejections - 35 U.S.C. §102

Claim 1 was rejected under 35 U.S.C. §102(b) as allegedly being anticipated by United States Patent No. 5,261,272 to Rush, II et al. Reconsideration and withdrawal of the rejection is requested.

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Claim 1 has been amended to specifically claim a “breathing circuit conduit in connection with a breathing assistance apparatus” in order to overcome the Examiner’s rejection. Applicants submit that in view of the specificity of the preamble of claim 1, Rush, II et al. does not anticipate the claimed invention.

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With regard to Figure 9 of Rush, II et al., the Examiner appears to believe that the sensor has a locating depression configured to receive a complimentary locating tooth (214A) from a sensor the interconnection of which providing a predetermined orientation of a sensor within the interior of the airflow component. However, as disclosed at Col. 6, lines 5-6, the top of the sensor housing 190 has an integral flange 214 which rests on the base strip 146. Hence, although the Examiner has pointed to the opening in the base strip 146 as being a depression, Applicants submit that this "depression" is merely an opening in the base into which the flange 214 rests, thereby holding the sensor in position on the base strip 146. In order to prevent the sensor housing rotating with respect to the base strip 146 when it is placed into the component airflow, a key 208 enters a component keyway 184. This ensures that the thermister is properly aligned with respect to the base strip 146. This feature is clearly disclosed at Column 6, lines 36-45.

The claimed invention uses the notch and tooth configuration in the wall of the sensor entry port, such that the sensor housing cannot be placed into the breathing circuit conduit airflow in the wrong orientation. Hence, there is no requirement for a user to rotate the sensor housing once it is inserted into the breathing circuit conduit, unlike the system as disclosed in Rush, II et al. Therefore, Applicants submit that Rush, II et al. does not anticipate claim 1. Reconsideration and allowance of claim 1 is requested.

Claims 1 and 14-16 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by United States Patent No. 4,363,238 to William. Reconsideration and withdrawal of the rejection is requested.

The Examiner has provided a representation of Figure 1 indicating his interpretation of "tooth" and the complimentary "depression", the interconnection of which provide a

predetermined orientation of the sensor within the interior of the flow channel. Applicants submit that the Examiner has been overly broad with his interpretation of the word "tooth", as well as the interpretation of the word "depression". What the Examiner considers to be the tooth is merely the body of the sensing device holder "insulated insert member 28" used to carry the holding arms 30 and 32. Member 28 is used to insert the sensing members into the flow tube opening, not unlike putting a cork into a bottle. Furthermore, the use of a "tooth" and a "depression" is not taught or even inferred in the disclosure of William. Hence, Applicants submit that William does not anticipate claims 1 or 14. Reconsideration and allowance is requested.

Claims 15 and 16 are dependent upon claim 14 which Applicants submit is allowable. Therefore, Applicants submit that claims 15 and 16 are allowable. Reconsideration and allowance is requested.

Some further amendments have been made to the claims to clarify the structure of the breathing circuit conduit and its interconnection with the breathing circuit conduit interior.

Claims 17-25 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over United States Patent No. 4,363,238 to William. Claims 17-25 are dependent upon claim 14 which Applicants submit is allowable. Therefore, Applicants submit that claims 17-25 are allowable. Reconsideration and allowance is requested.

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Related Applications

Applicants hereby advise the Examiner of the filing of reissue applications for United States Patent No. 6,349,722 (now reissue application Serial No. 10/900,071) and United States Patent No. 6,272,933 (now reissue application Serial No. 10/900,072). In addition, Applicants
5 hereby advise the Examiner of the United States Patent No. 6,584,972 which is in the same family of applications.

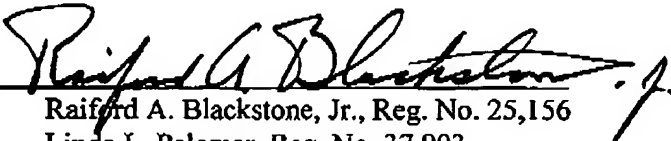
A Petition for a One-Month Extension of Time is concurrently submitted herewith to extend the date for response up to and including October 5, 2006.

Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

Dated: Sept 6, 2006

By:


Raiford A. Blackstone, Jr., Reg. No. 25,156
Linda L. Palomar, Reg. No. 37,903

TREXLER, BUSHNELL, GIANGIORGI
BLACKSTONE & MARR, LTD.
105 W. Adams Street
Suite 3600
Chicago, Illinois 60603
(312) 704-1890

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